

Documentation: How to Reduce Claims Liability

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TEXAS ASSOCIATION *of* COUNTIES
RISK MANAGEMENT POOL

Disclaimer

This training is designed to provide general information about the subject matter covered. Neither TAC nor the trainers are engaged in rendering legal advice. If you need legal advice, TAC recommends that you seek the services of a competent attorney who is familiar with your specific situation.



Learning Objectives

- Importance of Documentation
- Documenting Effectively
- Discipline & Documentation
- Liability & Unemployment



The only method of proof is:

Documentation



Documentation is a **COMMUNICATION TOOL**



Forms of Documentation

- Follow-up email after counseling
- Performance evaluations
- Disciplinary actions
- Explanations for employment actions



Documentation Best Practices

Just the facts

Concentrate on what needs correcting

Avoid words like “attitude” and “behavior”

Focus on the improvement you want to see



Be Specific...

- State specifics like “argues with other co-workers”, “makes inappropriate jokes” ...
- Avoid phrases that are vague and subject to interpretation ---- these are indefensible:
 - ✓ Don't use: “maintain a positive attitude”
 - ✓ Don't use: “be a team player”, “need interpersonal skills” ...



What should be Documented?

New Hires

- *Job descriptions, Handbooks

Disciplinary Actions

- *Attitude, Attendance, Job Performance

Complaints

- *Harassment, Discrimination, Wage

Accommodation Requests

- *Interactive Process



Job Description Components

- A summary of the position
- Essential job functions
“Why the job exists.”
- Marginal duties – additional duties
“Other duties as assigned”
- Physical requirements of job
“Physical actions required to perform essential job functions.”
- Working conditions
Environment, travel, overtime...



Performance Improvement Plans

- Identify performance issues
- Details for improvement
- Achieving expectations
- Progress reviews
- Address consequences
- Employee acknowledgment



Employee Handbooks



Signed Acknowledgments upon Hiring



Update policies as needed



Best Practice: Every 5 years



Have your HR Consultant review for compliance

Accommodations under ADAAA

Management receives request

Identify Essential Functions

Begin Interactive Process

Discuss Possible Accommodations



Common Disciplinary Issues

Attitude

Attendance

Anger

Performance Issues



Disciplinary Ground Rules

- Maintain At-Will Employment
- Always prohibit and investigate claims of discrimination or harassment
- Remember, last action you take for is what you must defend



Liability the “L” word

Supervisors must
comply with all
legislation:
Federal-State-Local

County needs
compliant policies

Supervisors must
treat all employees
equally and fairly

Supervisors must have
SPECIFIC and VALID
work-related reasons
for all actions

Supervisors must
document
everything.



Winning Unemployment

To get a disqualification:

- Employee awareness of county policies and procedures
- Policies must be consistently applied and uniformly enforced
- Employees must be given a fair chance to meet these requirements





Reducing Claims:

- Documentation is critical
- Address issues & discipline
- Update job descriptions & employee handbooks
- Fight all unemployment claims





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